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In The

Supreme Court of the United States

October Term, 1994

44 LIQUORMART, INC. and PEOPLES SUPER LIQUOR STORES, INC.,

Petitioners,

v.

STATE OF RHODE ISLAND and RHODE ISLAND LIQUOR STORE ASSOCIATION,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The First Circuit

BRIEF OF THE INSTITUTE FOR JUSTICE AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

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INTEREST OF AMICUS CURIAE

The Institute for Justice is a nonprofit, public interest law center committed to defending essential foundations of a free society and securing greater protection for individual liberty. Toward that end, the Institute seeks to reinvigorate the founding principles of the First Amendment by protecting the free flow of political and commercial information indispensable to our republican form of government and to our free enterprise economy. The instant case involves not only the level of constitutional protection afforded commercial speech, but is of fundamental importance to both a market economy and to consumers. The Institute's brief critiques the Rhode Island law primarily from the perspective of the ultimate beneficiary of commercial information: the consumer.

The Institute for Justice has obtained the consent of the parties to the filing of this brief and letters of consent have been filed with the Clerk.

STATEMENT OF THE CASE

Rhode Island has prohibited advertising the price of alcoholic beverages within the state since 1956. Retail alcoholic beverage dealers are not permitted to advertise their prices, and communications media within the state are prohibited from accepting advertisements that contain any reference to price. The law only applies to price advertising; all other forms of advertisements concerning alcoholic beverages are permitted. As a result of the prohibition, Rhode Island consumers can only learn the price of alcoholic beverages within licensed retail stores.

The sole justification provided by the state for the price advertising prohibition is to promote temperance.

The Liquor Control Administrator expansively interprets and aggressively enforces the ban. The record below demonstrates that one of the petitioners in the instant case was fined for violating the ban merely for containing within an advertisement the words "WOW" and "SALE." The advertisement did not state any prices. The record further demonstrates that other liquor licensees and newspapers have been warned and fined for violating the prohibition.

The petitioners operate retail stores for the sale of alcoholic beverages and seek to advertise the prices of their products. They challenged the constitutionality of the price advertising ban in the United States District Court for the District of Rhode Island, which struck down the ban as a violation of the First Amendment. The United States Court of Appeals for the First Circuit, however, reversed the lower court and upheld the ban. The question on which this Court granted *certiorari* was whether "Rhode Island may, consistent with the First Amendment, prohibit truthful, non-misleading price advertising regarding alcoholic beverages."

SUMMARY OF THE ARGUMENT

The free flow of price information is essential for consumers to make informed decisions. By prohibiting price advertising for alcoholic beverages, Rhode Island has deprived consumers of information that is vital to a well-functioning, market economy. As several Nobel Prize-winning economists have explained, interference

with the dissemination of price information has undesirable and, if taken to its logical extreme, devastating economic and social consequences.

The most pronounced effect of Rhode Island's price advertising ban is economic protectionism. A retail alcoholic beverage association supports the price advertising prohibition – and has joined as party to the instant case on the side of the state – because it fears that advertising may bring about increased competition and lower prices. The state should not be permitted to violate free speech rights, quash competition, and limit consumer choice in order to advance the economic interests of one component of the alcoholic beverage industry.

Under the First Amendment, "commercial" and "noncommercial" speech should be granted equal protection and all regulations that restrict commercial information should be subject to strict scrutiny review. Whatever standard of review is applied in the instant case, however, Rhode Island's price advertising prohibition does not pass constitutional muster.

ARGUMENT

I. PRICE INFORMATION AND ADVERTISING ARE VITAL COMPONENTS OF A MARKET ECONOMY THAT MUST BE PROTECTED UNDER THE FIRST AMENDMENT.

In *Virginia State Board of Pharmacy v. Virginia Consumer Council*, 425 U.S. 748 (1976), this Court recognized that two pillars of a market economy – price information

and advertising – are entitled to constitutional protection. Price information is "indispensable to the proper allocation of resources in a free enterprise system." *Id.* at 765. This Court's understanding of the crucial role of prices in a market economy has a solid foundation in economic theory. In his seminal essay, *The Use of Knowledge in Society*, Friedrich Hayek recognized that the price system is the central organizing mechanism of a market economy:

> We must look at the price system as such a mechanism for communicating information if we want to understand its real function . . . . The most significant fact about this system is the economy of knowledge with which it operates, or how little individual participants need to know in order to be able to take the right action. In abbreviated form, by a kind of symbol, only the most essential information is passed on and passed on only to those concerned. It is more than a metaphor to describe the price system as a kind of machinery for registering change, or a system of telecommunications which enables individual producers to watch merely the movement of a few pointers, as an engineer might watch the hands of a few dials, in order to adjust their activities to changes of which they may never know more than is reflected in the price movement. . . . Through [the price system] not only a division of labor but also a coordinated utilization of resources based on an equally divided knowledge has become possible.

Hayek, *The Use of Knowledge in Society*, 35 Am. Econ. Rev. 519 (1945), *reprinted in The Essence of Hayek* 211, 219-21 (Nishiyama & Leube eds. 1984). Thus, not only does a

price system coordinate economic activity on a grand scale, but it also gives consumers essential information in efficient form, provides the proper incentives for producers to adopt the best and lowest-cost methods of production, and directs resources to their most valued uses.

In a market economy, prices arise spontaneously, through the voluntary interactions of thousands of producers, sellers, and buyers. As economists Milton and Rose Friedman point out, the "price system works so well, so efficiently, that we are not even aware of it most of the time. We never realize how well it functions until it is prevented from functioning, and even then we seldom recognize the source of trouble." Friedman, Milton and Rose, *Free to Choose* 14 (1979). The "source of trouble," as the Friedmans and numerous other free market economists recognize, is governmental attempts to interfere with price information. Indeed, some of the most powerful and prophetic critiques of now-failed central economic planning schemes demonstrated the inability of government officials to coordinate economic activity without a price system. *See, e.g.*, Hayek, *The Road to Serfdom* 49-50 (1944); von Mises, *Human Action* 716-79 (1949). Without a price mechanism, it becomes impossible to allocate supply and demand, which inevitably leads to shortages, surpluses, and economic dislocation.

Although this country never tried to entirely eliminate the price system, government at all levels nevertheless interferes with price information in myriad ways. Even less comprehensive restrictions on price information, such as the Rhode Island law at issue in the instant

case, inevitably cause inefficient and undesirable consequences, discussed *supra*.

This Court also recognized in *Virginia State Board* that the right of producers to effectively transmit price information – to advertise – must be preserved. *Id.* at 765 ("advertising . . . is . . . dissemination of information as to who is producing and selling what product, for what reason, and at what price"). Although advertising is maligned by some individuals and organizations, this Court's understanding of advertising as a vehicle for transmitting essential information also has a solid basis in economic theory.

Economist George Stigler recognized that advertising is simply a method of providing potential buyers with knowledge of the identity of sellers and the products and prices they offer. Stigler, *The Economics of Information*, 69 Journal of Political Economy (1961), *reprinted in The Essence of Stigler* 46, 55 (Leube & Moore eds. 1986). The purpose of advertising, according to Stigler, is nothing less than the elimination of ignorance on the part of consumers. Consumer ignorance does not imply stupidity, but rather a lack of knowledge concerning the identity of sellers, the prices and quality of products, and other information consumers need to make informed economic decisions.

For years, economists were puzzled by the wide price differences for the same product even in a small geographical area. Many economists attributed such price differentials among businesses as evidence of a noncompetitive market for a particular product. Stigler, however, viewed these price differences as simply the result of

consumers not having the knowledge of different prices for products. If consumers possessed such information, they would naturally buy products from the businesses that offered the lowest price. The primary means for sellers to make consumers aware of their prices, and overcome consumer ignorance, is through advertising. Sellers, such as the petitioners in the instant case, benefit directly from advertising as consumers become aware of both a firm's existence and its prices, thereby increasing the likelihood of greater sales and profits for the business.

Sellers, however, are not the primary beneficiaries of price advertising. As buyers become aware of price differences, they will naturally patronize businesses that have the lowest prices. As a result, businesses will have to reduce their prices or offer other incentives in order to attract customers. The competition among sellers that results from easily available price information and advertising thus directly benefits consumers. As the following section more substantially sets forth, the ability of Rhode Island consumers to take advantage of lower prices as a result of vigorous competition is eviscerated by Rhode Island's ban on alcohol price advertising.

II. RHODE ISLAND'S PRICE ADVERTISING PROHIBITION IS AN ANTI-COMPETITIVE, PROTECTIONIST LAW THAT BENEFITS ONE SEGMENT OF THE ALCOHOLIC BEVERAGE INDUSTRY TO THE ULTIMATE DETRIMENT OF CONSUMERS.

The only justification offered by the State of Rhode Island for its ban on alcohol price advertising is the

promotion of "temperance." *44 Liquormart, Inc. v. Rhode Island*, 39 F.3d 5 (1st Cir. 1994); R.I. Gen. Laws § 3-1-5. The appeals court accepted at face value the state's justification, claiming that "there would seem inherent merit in the State's contention that competitive price advertising would lower prices, and that with lower prices there would be more sales." *44 Liquormart*, 39 F.3d at 7. Rhode Island claims that "price wars" would inevitably result from a competitive market in alcohol, thus triggering greatly increased levels of alcohol consumption.

Rhode Island's disapproval of price competition in the retail alcohol market cannot, however, negate one very simple fact – absolutely no credible evidence exists demonstrating a connection between lower alcohol prices and increased alcohol consumption. Indeed, many studies of the alcohol market demonstrate that there is no connection between lower prices and increased demand. For instance, a well-known study conducted in the 1960s contrasted states with high prices for alcohol to states with low alcohol prices. New York State Moreland Commission on the Alcoholic Beverage Control Law, *Report and Recommendations No. 3* (January 21, 1964). The study analyzed annual rates of alcoholism, drunk driving, public drunkenness arrests, and other factors and concluded that "artificially high prices for liquor have no substantial relationship to temperance." *Id.* at 19. A 1985 Federal Trade Commission report also found no causal link between alcohol advertising and increased levels of alcohol consumption. *See* Ekelund, Jr. & Saurman, *Advertising and the Market Process: A Modern Economic View* 149 (1988).

Although price advertising does not increase consumer demand for alcoholic beverages, it usually leads to

one thing all consumers desire: lower prices. Most alcohol retailers distribute the same spectrum of products. Admittedly, some alcohol stores may specialize in hard-to-find or imported liquors or wines. But in most alcoholic beverage stores, one will always be able to find a fifth of Jack Daniels, a bottle of chardonnay or a case of Budweiser. One of the only competitive factors between alcohol stores, apart from convenience or selection, is price. Rhode Island, through its price advertising prohibition, eliminates the primary competitive mechanism in the retail alcohol market.

If price advertising of alcohol does not cause increased levels of alcohol consumption, one may legitimately ask why liquor stores, including petitioners in the instant case, wish to advertise price information. The answer is that price advertising acts as an "allocator of demands" among stores or brands within a particular industry. *Id.* at 148. In other words, consumers do not buy more alcohol due to lower prices, but rather will choose those stores or brands with the lowest prices. By prohibiting alcohol retailers from advertising their prices, Rhode Island consumers do not know which stores have the best prices of their preferred brands of alcoholic beverages. Under the price advertising ban, Rhode Island consumers are the ultimate losers. They are currently in a market position of "less information, reduced choice and a strong likelihood of higher prices." *See id.* at 150.[1]

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[1] One of the ironic twists of the instant case is that Rhode Island ranks in the top 30 percent of states in per capita alcohol consumption even with its 39 year-old price advertising prohibition. *See* Petition for Writ of Certiorari, 44 *Liquormart v. State of Rhode Island* at 23.

It is apparent from even a cursory glance at the record of the instant case that another motivation underlies Rhode Island's price advertising ban: economic protectionism of the most obvious and egregious variety. It is not uncommon for seemingly benevolent legislation to be rooted in attempts by some private parties to gain personal advantage through the political process at the expense of others. Public choice economists have labeled such behavior "rent-seeking." Buchanan, Tollison, & Tullock, *Toward a Theory of a Rent-Seeking Society* (1981) (containing definitive treatment of rent-seeking and its origins and effects upon a democratic society).

Often, rent-seeking is hidden and one must search and, at times, speculate as to the special interest motivations that underlie supposed public-regarding legislation. In the instant case, the special interests supporting the price prohibition are readily apparent from the caption of the case. The Rhode Island Liquor Store Association was granted intervenor status as co-defendant with the State of Rhode Island. The Association is made up of smaller liquor stores who wholeheartedly support the price advertising prohibition. The Association claims that if the prohibition were overturned, its members "would be obliged to participate in the advertising arena and would be at a definite disadvantage when matched up against retailers who hold multiple licenses." 44 *Liquormart*, 39 F.3d at 6. Furthermore, the Association claims that competitive price advertising would tend to lower prices and that a "more competitive market for alcohol might be considered an undesirable goal."[2] *Id.*

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[2] It is not surprising to find the Association wrapping its purely self-interested motivations for supporting the advertising

The prohibition on price advertising is a classic example of a special interest policy, one that "generates substantial personal benefits for a small number of constituents while imposing a small individual cost on a large number of other[s]." Gwartney, "Public Choice and the Conduct of Representative Government," *Public Choice and Constitutional Economics* 1, 19 (Gwartney & Wagner eds. 1988). Under special interest legislation, the benefits to certain private parties are highly concentrated, while the costs are widely diffused. In other words, a few parties "benefit a great deal while almost everyone loses a little bit." *Id.* In the instant case, the liquor stores directly benefit from not having to offer competitive prices in order to attract customers. Of course, the costs to Rhode Island consumers in higher alcohol prices are spread out and largely hidden, yet they are no less real. Furthermore, unlike the Association's lobbying and litigation efforts, Rhode Island consumers have no rational incentive to organize and oppose the advertising prohibition. The costs for doing so would be extremely high while the payoff, in the form of lower alcohol prices, would not make the effort a rational choice.

The Founders recognized the problem of special interest legislation or "faction" and sought to curtail abuse of the legislative process through constitutional restraints. *See The Federalist* No. 10 (Madison). The First Amendment to the United States Constitution, no less

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prohibition in the shroud of public interest justifications. It borders on the absurd, however, for the Association to express concern for promoting temperance when its members' livelihoods are based upon public demand for alcoholic beverages.

than other provisions of the Constitution, serves as a check on both majoritarian and special interest abuses. This Court sought to curb these abuses of the democratic system in *Virginia State Board* by rejecting on First Amendment grounds a Virginia law that forbade pharmacists from advertising the prices of prescription drugs. *Virginia State Board*, 425 U.S. at 769-70. The purpose of the Virginia law was to encourage the use of smaller pharmacies by depriving consumers of information that those pharmacies were more expensive. This Court held that the pharmacies could not be insulated from competition by keeping consumers in the dark and depriving them of information that could be used for making better economic decisions. Likewise, the Rhode Island Liquor Store Association should not be permitted to use the power of the state to further its members' economic interests at the expense of petitioners and Rhode Island consumers.

III. COMMERCIAL SPEECH SHOULD BE GRANTED THE SAME PROTECTION UNDER THE FIRST AMENDMENT AS OTHER FORMS OF SPEECH AND EXPRESSION.

It is beyond dispute that commercial speech is entitled to constitutional protection under the First Amendment. *Rubin v. Coors Brewing Company*, 115 S.Ct. 1585 (1995); *Edenfield v. Fane*, 113 S.Ct. 1792 (1993); *City of Cincinnati v. Discovery Network, Inc.*, 113 S.Ct. 1505 (1993); *Virginia State Board, supra*. Furthermore, this Court has recognized that the information at issue in the instant case – truthful, non-misleading commercial information – is entitled to the highest degree of protection afforded

commercial speech. *Edenfield*, 113 S.Ct. at 1797. A four-part test was established by this Court for reviewing commercial speech restrictions in *Central Hudson Gas & Electric Corp. v. Public Service Comm'n of N.Y.*, 447 U.S. 557, 566 (1980):

> For commercial speech to come within [the First Amendment], it at least must concern lawful activity and not be misleading. Next, we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than necessary to serve that interest.

Despite the strictures of the *Central Hudson* test, the United States Court of Appeals for the First Circuit relied on "warrantable inferences" in determining that Rhode Island's price advertising prohibition directly advanced the state's purported interest in promoting temperance. *44 Liquormart*, 39 F.3d at 6. Furthermore, the appeals court held that the state was entitled to a "reasonable choice" under *Central Hudson*'s fourth prong. *Id.* at 7. Accordingly, it upheld the prohibition under the third and fourth prongs of the *Central Hudson* test.[3]

The appeals court essentially adopted "rational basis" review for commercial speech restrictions. This holding not only clearly conflicts with the decisions of other circuit courts, but it also guts the protections for

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[3] The first and second prongs of the *Central Hudson* test are not at issue in the instant case. The parties agreed that the price information petitioners seek to advertise is truthful and that the state has a substantial interest in promoting temperance.

commercial speech recognized by this Court for two decades. The misapplication of the *Central Hudson* test by the appeals court is addressed below.[4]

In contrast to the First Circuit's approach, at least two circuits have recently reached opposite conclusions

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[4] In applying the *Central Hudson* test, the appeals court also inappropriately relied on the Twenty-First Amendment to ratchet down the government's burden of proof under the third and fourth prongs of the test. In its opinion, the court misconstrued prior decisions by this Court concerning the Twenty-First Amendment. As this Court has recognized: "Neither the text nor the history of the Twenty-First Amendment suggests that it qualifies individual rights protected by the Bill of Rights and the Fourteenth Amendment where the sale or use of liquor is concerned." *Craig v. Boren*, 429 U.S. 190, 206 (1976) (striking down law that established different legal drinking ages for men and women).

In applying the intermediate scrutiny test in *Craig*, this Court held that the Twenty-First Amendment did not affect the government's burden of proof for showing that classifications by gender were substantially related to the achievement of important governmental objectives. *Craig*, 429 U.S. at 209. Similarly, this Court held in *Larkin v. Grendel's Den, Inc.*, 459 U.S. 116, 122 (1982), that the Twenty-First Amendment did not modify the government's burden of proof under the *Lemon v. Kurtzman*, 403 U.S. 602 (1972), test in Establishment Clause cases. Applying this Court's reasoning to the commercial speech context, the Twenty-First Amendment cannot be used to reduce the government's burden to prove, under *Central Hudson*, that its regulation directly advances the governmental interests asserted and is not more extensive than necessary to serve that interest. While the amendment may be used to demonstrate Rhode Island's substantial state interest in promoting temperance, it does not relieve the state of its burden to prove that the price advertising ban directly advances the state's interest in temperance in a manner no more restrictive of free speech than necessary.

and adopted markedly different tests for determining the level of constitutional protection afforded commercial speech under the third and fourth prongs of *Central Hudson*. The Ninth Circuit held that the United States Department of Agriculture's (USDA) almond marketing program, which required almond handlers either to advertise according to regulations or contribute an assessment fee to the California Almond Board, violated the third and fourth prongs of the *Central Hudson* test. *Cal-Almond, Inc. v. United States Dep't of Agriculture*, 14 F.3d 429 (9th Cir. 1993). The USDA claimed that the almond marketing program was necessary to provide for greater stability in agricultural products and to protect the income of farmers.

Relying on this Court's decision in *Edenfield*, the Ninth Circuit held that the burden fell on the USDA to justify its program by presenting evidence sufficient to meet the third prong of the *Central Hudson* test. Because the USDA conducted no studies concerning almond advertising, the court held that the program did not "directly advance" the asserted governmental interests. Furthermore, the USDA did not present any evidence that companies would spend less money on advertising in the absence of a mandatory contribution program. The court also found that the program violated the fourth prong of *Central Hudson* by declaring that "restrictions which disregard far less restrictive and more precise means are not narrowly tailored." *Cal-Almond*, 14 F.3d at 440. Accordingly, both the advertising regulation and the mandatory contribution program were struck down as unconstitutional restrictions on commercial free speech rights.

Likewise, the Fifth Circuit held that the City of Dallas could not, consistent with the First Amendment, restrict the advertising of "Class D Dance Halls." *MD II Entertainment, Inc. v. City of Dallas*, 28 F.3d 492 (5th Cir. 1994). The city claimed that it adopted advertising restrictions on topless bars to combat decreasing property values and increasing crime. Again, the city produced no studies showing a link between advertising and decreased property values or increased crime. *Id.* at 496. Therefore, the restrictions flunked the third prong of *Central Hudson*. Furthermore, the court found that the restrictions were overly broad in violation of *Central Hudson*'s fourth prong because they prohibited language that has never been alleged to cause reductions in property values or lead to increased crime. *Id.* at 496-97.

This Court in *Edenfield*, 113 S.Ct. at 1800, held that the government's burden under the third prong of *Central Hudson* "is not satisfied by mere speculation or conjecture; rather, a governmental body seeking to sustain a restriction on commercial speech must demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree." Significantly, Rhode Island, like the USDA and the City of Dallas, produced absolutely no empirical evidence demonstrating that the price advertising ban will "alleviate to a material degree" alcohol consumption and thereby directly advance the state's interest in temperance. *See Edenfield*, 113 S.Ct. at 1800. Indeed, as set forth in Section II, studies show that alcohol price advertising has *no* effect on alcohol consumption. Clearly, the appeals court's reliance on "warrantable inferences" to uphold the price advertising prohibition is insufficient under the

third prong of the *Central Hudson* test and Rhode Island has failed to show that its ban "directly advances" its interest in temperance.

In examining the fourth prong of *Central Hudson*, the appeals court in the instant case justified its extremely lax standard of review by focusing on this Court's occasional use of the term "reasonable" in describing the necessary fit between governmental interests and the means chosen to advance those interests. *See Board of Trustees of State University of New York v. Fox*, 492 U.S. 469 (1989); *Posadas De Puerto Rico Associates v. Tourism Co. of Puerto Rico*, 478 U.S. 328 (1986). Although this Court in *Fox* announced that the reasonable fit test is "far different, of course, from the 'rational basis' test," *Fox*, 492 U.S. at 480, the appeals court interpreted the *Fox* language to essentially mandate "rational" basis review for commercial speech regulations.

It is imperative that this Court make clear that neither *Fox* nor *Posadas* permits courts to grant such a high degree of deference to states in imposing commercial speech restrictions. Furthermore, this Court should establish a standard for commercial speech restrictions that was suggested in *Discovery Network* and *Edenfield*: "[A] regulation that suppresses truthful commercial speech to serve some other governmental purpose" (such as health, safety, and welfare concerns) should be subject to strict scrutiny review. *Discovery Network*, 113 S.Ct at 1518 (Blackmun, J., concurring); *see also Edenfield*, 113 S.Ct. at 1804 (Blackmun, J., concurring). Accordingly, commercial speech regulations that regulate or suppress truthful information can only be upheld if they are the least

restrictive means for advancing governmental health, safety and welfare interests.[5]

Applying the strict scrutiny standard to the facts of the instant case renders the price advertising prohibition unconstitutional. As petitioners showed in the lower courts, the state has a number of less restrictive alternatives available to combat alcohol consumption, or any increase in alcohol consumption caused by lower prices. Such alternatives include taxing alcoholic beverages at a higher rate or setting minimum alcohol prices. Although these means may not be economically desirable and *amicus* would not endorse either from a public policy perspective, the fact that less restrictive alternatives exist invalidates the price advertising restriction. Accordingly, Rhode Island's law does not pass constitutional muster under the fourth prong of *Central Hudson*.[6]

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[5] This test would reinforce *Central Hudson*'s requirement that a commercial speech regulation be "no more extensive than necessary" to further governmental interests. This requirement would eliminate once and for all any concern that either *Fox* or *Posadas* weakened the protection afforded commercial speech under the First Amendment.

Of course, adoption of a strict scrutiny standard for restrictions on truthful commercial information would still allow the government to regulate misleading or coercive speech. The government could also regulate the time, place, and manner of commercial speech. Such restrictions could be reviewed either under intermediate or rational basis review. *See Discovery Network*, 113 S.Ct. at 1517.

[6] Even if this Court were to reject strict scrutiny and apply the "reasonable fit" test articulated in *Fox* and *Posadas*, Rhode Island's prohibition on price advertising cannot withstand scrutiny under the fourth prong of the *Central Hudson* test. As set forth above, the prohibition flagrantly violates the third prong

CONCLUSION

Rhode Island's restriction on advertising the price of alcoholic beverages is, at bottom, a policy of "consumer ignorance." *See Coors Brewing*, 115 S.Ct. at 1597. A government policy that keeps consumers in the dark, and prevents producers from providing truthful information, runs directly counter to the First Amendment and the glorious tradition of free speech and open inquiry in this country. Rhode Island's price advertising ban prohibits information that is essential to a well-functioning market economy. Even worse, the maintenance of the policy is directly at the behest of an interest group that seeks to preserve the status quo for its own economic benefit. As Justice Stevens declared in *Coors Brewing*, the "Constitution is most skeptical of supposed state interests that seek to keep people in the dark for what the government believes to be their own good." *Id.* at 1597. This Court should lift the veil of ignorance cast over Rhode Island consumers by the state and the Rhode Island Liquor Store Association by striking down the price advertising ban.

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of *Central Hudson*. Moreover, as the majority opinion made clear in *Coors Brewing*, 115 S.Ct. at 1593-94, the availability of other options, all of which could advance governmental interests in ways less intrusive of First Amendment rights, establishes that the price advertising ban is more extensive than necessary. Therefore, no matter what standard of scrutiny is adopted by this Court, the price advertising prohibition in the instant case cannot be upheld. *See Coors Brewing*, 115 S.Ct. at 1597 (Stevens, J. concurring) ("the Government's asserted interest, that consumers should be . . . uninformed for their own protection, does not suffice to justify restrictions on protected speech in *any* context, whether under 'exacting scrutiny' or some other standard") (emphasis in original).

For all the foregoing reasons, *amicus curiae* Institute for Justice respectfully requests that this honorable Court reverse the opinion below.

Respectfully submitted,

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